IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO.167 OF 1998

Shri.Mohammed Sannaulla Gausmuddin Amir Sab .. Applicant (Orig.Accused)

V/s.

State of Maharashtra (At the instance of Nigdi Police Station, Pune) .. Respondent. (Orig.complainant)

Smt.Sharmila Kaushik with Shri.Prakash Naik for the applicant.

Shri.Rajesh More, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 22ND DECEMBER,2006.

ORAL JUDGEMENT : -

1. This is one more case of rash and negligent driving of a truck/lorry on a busy road, namely, Bombay-Pune Highway. The accident in this case resulted in death of 5 (five) persons travelling in a small car (Maruti-800). This car was crushed by the truck/lorry

well passed midnight. The dead include a newly married couple. Such incidents are increasing day by day. Although this accident is of 1998, the situation has far from improved. The number of licences issued to drive vehicles, the brand of vehicles and latest models on the road increasing so also the modern roads would see more and more accidents on Highways and loss of precious human lives. The warning issued by the Hon'ble Supreme Court is futile in this era of speed and modernisation.

2. The applicant is original accused in R.C.C.No.4 of 1992 which was on the file of the 2nd Joint J.M.F.C., Pimpri, Pune. The applicant was accused of having committed offences punishable u/s.279, 304(A), 338 & 427 of I.P.C. so also Sections 78, 112 & 116 of M.V.Act.

3. Upon trial, the applicant has been convicted by the J.M.F.C., Pimpri, Pune on 24th June 1994 for the above offences and has been sentenced to suffer simple imprisonment for three months and fine of Rs.500/-. In default to suffer simple imprisonment for one month. The applicant has been convicted and sentenced for all offences, save and except the one punishable u/s.427 of I.P.C. The order of conviction and sentence reads thus :

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1. Accused Mohammad Sannaulla Gausmuddin Amir Sab is hereby convicted for the offences punishable under sect.304(A), 279, 338 of I.P.C. r/w. 78/112/116 of M.V.Act (old) and he is sentenced to suffer S.I. for 3 months and to pay fine of Rs.500/- id/to suffer S.I. for one month for Sec.279 of IPC he is further sentence S.I. for 3 months and to pay fine of Rs.500/- i/d suffer S.I. for month for the offence punishable u/sec.338 of I.P.C. He is further sentenced to suffer S.I. for one year and to pay fine of Rs.500/- i/d to suffer S.I. for one months for the offence punishable under sec.304(A) of Indian Penal Code. He is further sentenced to pay fine of Rs.300/- for the offence punishable under sec.78/112/116 of motor vehicle act i/d. to suffer S.I. for one month.

2. Accused is acquitted of the offence punishable under sec.427 of I.P.C.

3. Accused has to under go imprisonment for

all the sections concurrently.

4. His bail bond stands cancelled.

4. The applicant being aggrieved and dissatisfied by this judgement and order, preferred Criminal Appeal bearing No.161 of 1994 in the Court of Additional Sessions Judge, Pune. The learned Additional Sessions Judge by his judgement and order dated 10th July, 1998 dismissed the appeal of the applicant. He maintained the conviction and sentence. That is how the applicant is in revisional jurisdiction before this court.

5. Ms.Kaushik appearing for the applicant-accused submits that the courts below being committed an error apparent on the face of the record while holding the applicant guilty and pronouncing the sentence against him. She submits that the incident is of 4th May, 1991. The whole incident is of a collusion between a truck and a Maruti vehicle. The truck was coming from Pune towards Mumbai on the old Bombay-Pune road. The Maruti vehicle was proceeding towards Pune. The prosecution story is that the vehicle/truck was being driven at a very high speed and rashly. Suddenly it came on its wrong side,

namely, on the right side and hit the Maruti vehicle. The accident was of such nature that the vehicle/Maruti came under the truck and was crushed completely. About five persons have died in the accident. The 6th person, original complainant, namely prosecution witness Ashok Agarwal was also travelling in the vehicle. He was seriously injured. She submits that there were two drivers, who were driving the truck at the relevant time. The applicant was in fact sleeping when the vehicle was being driven by the other driver. The applicant got up with the sudden jerk when he heard some screeching sounds. She submits that there were no eye witnesses to the accident. It is a case of circumstantial evidence. The applicant was admittedly not at the driving seat. There are no independent witnesses. She submits that there are material contradictions in the version of the prosecution witnesses. These contradictions go to the root of the matter. The contradictions in their version, if seen in the backdrop of the site panchnama, would indicate that there is no support to the prosecution story. Similarly, the testimony of the injured witness is also not reliable and trustworthy. She submits that the truck has not crossed over to the right side. There was no divider. On the other hand, it is clear that if the truck had dented

on its left portion so also the glasspane of the window on the left side having been broken, the entire version, that the truck came on the wrong side i.e. right side of the road, is false and totally unbelievable.

6. The material on record according to her would reveal that it is the Maruti vehicle which was driven at a very high speed and as there was a slope and it being uncontrollable came on the wrong side of the road and that is how was crushed allegedly. However, the same is not possible considering the fact that the left side bumper of the truck has been dented. In such circumstances, the learned J.M.F.C. and the Additional District Judge were in complete error in convicting the applicant. They omitted to make any reference to these contradictions and discrepancies. Once they have so omitted, their orders can safely be termed as perverse. They are required to be interfered with in revisional jurisdiction. In such circumstances, this court must interfere and set aside the same. Moreover, when this revision application has been admitted on 23rd July, 1998 and the applicant has been enlarged on bail for all this period, this court should take an appropriate view of the matter.

7. On the other hand, the learned A.P.P. supported the orders passed by the courts below. He submitted that the prosecution has proved that the truck bearing No.CRT-8949 dashed against the Maruti vehicle by coming on the wrong side of the road. There are six witnesses, who have been examined. That there was a divider on the road is a fact spoken by all the witnesses. He submits that some minor contradictions in the prosecution version would not be fatal to the case. In such circumstances, and when revisional court cannot reappraise and reappreciate the materials, this court should not interfere with the concurrent orders of conviction and sentence. In other words, he submits that the revision application be dismissed.

8. With the assistance of the learned advocates appearing for both sides, I have perused this revision application and the annexures thereto. The courts below have proceeded on the footing that on 5th May, 1991 on Bombay-Pune road, the accident has occurred. The vehicles involved are a truck bearing No.CRT-8949 and Maruti car bearing No.MVL-529. Deaths have occurred in the Accident. There does not appear to be any serious dispute with regard to the place where the accident took place.

9. Witness No.1 is Uttam Namdev Sandbhor, a Police Constable attached to Nigdi police station at the relevant time. He has deposed that he heard big noise at about 2.45 a.m. at the police chowky. He and his other colleague Bakshraj rushed to the spot. The spot is Bombay-Pune road. The truck was going from Pune towards Bombay whereas the Maruti vehicle was coming from Bombay towards Pune. The truck had crushed the Maruti vehicle. His deposition is that the truck came on the wrong side of the road. Four persons died on the spot and two were injured. It is his version that the driver of the said vehicle appeared before the police station under fear. He gave his name as Mohammad Amir Sab. According to him, the accident occurred because the truck was driven on the wrong side of the road. The version of P.W.1 has not been shaken in the cross examination. Save and except the suggestion put to him that there were two drivers in the truck and that the person who is before the court is not one who was driving the truck, there is neither any admission nor any omission or contradiction. The further suggestion is that the applicant-accused was sleeping behind the driver when the accident occurred and one Gopal Kisanappa was driving the truck. Thus, beyond raising an

issue of identity of the driver, there does not appear to be any cross examination of this witness.

10. The other witness is Badhsha Abaasali Bakshraj. He is also a police constable attached to Nigdi police station. His version is that the truck driver was available on his driving seat and he sent him to the police station. It is his version that he informed P.S.I. Shri.Jhagade about the accident. His version is that the driver lost control over the truck and the truck went on wrong direction and dashed against the Maruti car which was coming from opposite direction. However, he also named the driver as one Mohammad Amir Sab as driving the truck.

11. In his cross examination, he was asked questions with regard to the spot where the accident took place. There are some minor variations with regard to the accident place, whether it is on the southern or on the northern side. However, he has deposed that when he reached the accident spot, the accused-applicant was available in the driving seat. The constable told him to come to the police station and inform about the accident. His further cross examination is with regard to the

injuries and the injured persons being shifted to the hospital. A suggestion is given as to who accompanied him to the hospital. Once again, he is questioned with regard to the identity of the driver. A suggestion is given that the person driving the vehicle ran away whereas the accused-applicant being sleeping in the truck at the relevant time, was caught. Thereafter suggestions are given with regard to the negligence of the vehicle drivers. It was suggested that the Maruti vehicle came at a high speed and on account of negligence of its driver, the accident occurred, which suggestion is also denied by him.

12. P.W.3 is one Bhanudas Mahadev Sasane, who is a Panch witness. He has identified the accident spot. He also deposed that the Maruti car was totally damaged. The right side of front portion of truck was pressed and there was white colour on the bumper portion.

13. His version is also not shaken in the cross examination, save and except suggesting that it was too early in the morning and it is not possible that the Panch witness would be available for carrying out panchanama and identifying the spot at such an hour where the accident

occurred. He was also questioned as to when he was told to come and act as a Panch witness but that, to my mind, does not affect the testimony adversely.

14. The other person, who has been examined as a witness is one Ashok Banaridas Agarwal. He was travelling in the Maruti vehicle. He has witnessed the accident. He was himself injured and carried to Ruby hospital. He has said that five other passengers in the Maruti vehicle have expired. His deposition is that the truck came from opposite direction, crossed the divider and dashed against the vehicle namely Maruti car. The suggestion given to him was as to how many persons can travel in the Maruti vehicle. He was also asked as how many persons can sit in the front portion of the car and it is not possible that three persons can sit in the front and rest at the rear. He was also questioned with regard to road divider. It appears that the suggestion is that there was no divider which divides the road. It is not necessary to go into these aspects in the revisional jurisdiction for the first time because it is nobody’s case that the road was not open to traffic from both sides.

15. The testimony of the other witnesses is not so

much material.

16. However, Ms. Kaushik has invited my attention to the spot panchanama. She submits that the spot panchanama which is placed on record in this case is not accompanied by any sketch. The exact spot and location of the accident remains unidentified. Moreover, it is her case that this spot panchanama reveals that the truck has suffered a dent on the left side. There was a tree which damaged the left portion and broke the left window pane of the truck. It is her submission that it is impossible that the left side portion of the truck would be damaged in the accident. Unless the vehicle comes from the opposite direction and dashes against the truck towards the left side, it would not suffer any damage or dents. Further, the Panch witness states that the driver was there in the vehicle. In fact, the driver had ran away is her version.

17. It is not possible to accede to the submissions of Ms.Kaushik that the accident occurred because the Maruti vehicle was being driven at a high speed and came on the wrong side of the road. That is not the case put to any witnesses during the trial. The accused has not examined

anybody in his defence. In such circumstances, it is not appropriate to entertain such contention in this court for the first time.

18. The courts below have after taking into consideration all materials negatived the contention of the applicant that he was not driving the vehicle. The courts below have rightly observed that if such is the nature of the defence, then the burden shifts to the applicant and he has to show that he was not driving the vehicle.

19. The entire emphasis before the courts below is on the identity of the person driving the vehicle and the applicant contended that he was not driving the same.

20. The courts below have observed that there is no dispute about the accident and the spot where it took place so also the road. Considering that the car was crushed under the truck and the truck dragged it, so also the truck’s right portion being bent, it is clear that the version of P.W.1 is corroborated by other witnesses including spot panchanama. The accident took place within the vicinity of a police chowky.

21. Further, a person travelling in the vehicle, namely, Ashok Banaridas Agarwal has also deposed and his testimony is found to be trustworthy and reliable.

22. It is in such circumstances that the courts below have concurrently observed that the accident has occurred on account of rash and negligent driving of the truck driver and also his identity is not in dispute. Once the vehicles involved in the accident are clearly identified along with the place at the time of its occurrance, then, it is futile to suggest that some other person was driving the vehicle. It is nobody’s case that the applicant was not in the truck at all. The case is he was not at the driver’s seat. This has to be proved by the applicant but he did not lead any evidence. All three witnesses examined by the prosecution have said that the driver came to the police station and gave his name as Mohammad Amir Sab. Thus, there is no substance in this contention of Ms.Kaushik. Merely submitting that the applicant was not the one who was driving the vehicle would not be enough for the driver-applicant to escape his responsibility and liablility. Something more was necessary to be placed on record which is not done and that is how the applicant is

held guilty of the offence alleged.

23. The lower Appellate Court has properly analysed the evidence, scrutinised it and appraised it in accordance with the well settled principles in law. It has fully performed its duty as a first Appellate Court. Its observations and findings at para 15 to 18 would show that the accident occurred on account of rash and negligent driving by the applicant-accused.

24. Thus, the courts below were right in convicting the applicant of the charges alleged on the point of sentence as well, the submissions of both sides have been heard at length. The plea based on Section 360 of Cr.P.C. and Probation of Offenders Act is negatived. The same has been negatived considering the fact that five persons died in the accident and the passengers included a newly married couple. Therefore, the benefit was rightly not extended.

25. The applicant has been convicted for the offences punishable u/s.304(A), 279, 338 of I.P.C. r/w. relevant provisions of the old Motor Vehicle Act and even the sentence awarded has been directed to run concurrently.

26. However, the submission of Ms.Kaushik is that the applicant has been enlarged on bail by this court while admitting this application. The application was admitted in the year 1998. The applicant is poor and today his financial condition is not sound. In such circumstances and considering that the other person has absconded after the accident, a lenient view may be taken by this court.

27. Taking an overall view of the matter, I am of the opinion that interest of justice would be served by reducing the sentence of one year to three months. The same is awarded by the trial court and the First Appellate Court for the offence punishable u/s.304(A) of I.P.C. The sentence imposed for the offences punishable u/s.279 & 338 so also under old Motor Vehicle Act is not required to be altered so also the fine. Thus, except for reducing the sentence to three months, the order of conviction and sentence imposed by the courts below is maintained. It is directed that the sentence as awarded by this court would run concurrently.

28. The applicant is enlarged on bail. He shall surrender to custody forthwith and undergo the sentence

awarded. The bail bond stands cancelled.

29. Revision Application is dismissed, save and except this modification. Rule discharged.

(S.C.Dharmadhikari, J)